



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 230523-0136]

RIN 0648-BM07

#### Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast

#### Groundfish Fishery; 2023 Harvest Specifications for Pacific Whiting, and 2023 Pacific

#### Whiting Tribal Allocation

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the domestic 2023 harvest specifications for Pacific whiting including the 2023 tribal allocation for the Pacific whiting fishery, the non-tribal sector allocations, and a set-aside for incidental mortality in research activities and non-groundfish fisheries. NMFS issues this final rule for the 2023 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan, the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Whiting Act of 2006, and other applicable laws. These measures are intended to help prevent overfishing, achieve optimum yield, ensure that management measures are based on the best scientific information available, and provide for the implementation of tribal treaty fishing rights.

**DATES:** Effective [*insert date of publication in the FEDERAL REGISTER*].

#### ADDRESSES:

##### Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register** website at <https://www.federalregister.gov>. Background information and documents are available at the

NMFS website at <https://www.fisheries.noaa.gov> and at the Pacific Fishery Management Council's (Council's) website at <http://www.pcouncil.org/>.

**FOR FURTHER INFORMATION CONTACT:** Colin Sayre, phone: 206-526-4656, and email: [Colin.Sayre@noaa.gov](mailto:Colin.Sayre@noaa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The transboundary stock of Pacific whiting is managed through the Agreement Between the Government of the United States of America and the Government of Canada on Pacific Hake / Whiting of 2003 (Agreement). The Agreement establishes bilateral management bodies to implement the terms of the Agreement, including the Joint Management Committee (JMC), which recommends the annual catch level for Pacific whiting. NMFS issued a proposed rule on April 06, 2023 (88 FR 20457), that describes the Agreement, including the establishment of F-40 percent default harvest rate, the explicit allocation of Pacific whiting coastwide total allowable catch (TAC) to the United States (73.88 percent) and Canada (26.12 percent), the bilateral bodies to implement the terms of the Agreement, including the Joint Management Committee (JMC), and the process used to determine the coastwide TAC under the Agreement, including adjusting the TAC for carryovers from the prior year. The proposed rule also proposed allocating 17.5 percent of the U.S. TAC of Pacific whiting for 2023 to Pacific Coast Indian tribes that have a treaty right to harvest groundfish, and implementing a set-aside (750 metric tons (mt)) for Pacific whiting for research and incidental mortality in other fisheries.

### **2023 TAC Recommendation**

The Treaty's Advisory Panel (AP) and JMC met in Vancouver, British Columbia, Canada February 28 - March 1, 2023, to develop advice on a 2023 coastwide TAC. The AP provided its 2023 TAC recommendation to the JMC on March 1, 2023. The JMC reviewed the advice of the AP, as well the Treaty's Joint Technical Committee, and Science Review Group, , and agreed on a TAC recommendation for transmittal to the United States and Canadian Governments.

The Agreement directs the JMC to base the catch limit recommendation on the default harvest rate unless scientific evidence demonstrates that a different rate is necessary to sustain the offshore Pacific whiting resource. After consideration of the 2023 stock assessment and other relevant scientific information, the JMC did not use the default harvest rate, and instead agreed on a more conservative approach. There were two primary reasons for choosing a TAC well below the level of F-40 percent. First, the JMC noted aging of the 2010, 2014, and 2016 year classes and wished to extend access to these stocks as long as possible, which a lower TAC would accomplish by lowering the rate of removal of these year-classes. Second, there is uncertainty regarding the current size of the apparent large 2020 year class because there has not yet been a post-recruitment observation of this cohort by an acoustic survey. The JMC recommended a moderate increase in the TAC, rather than a large increase up to the full F-40 percent harvest rate until a more certain estimate of the year class's size is available after one more year of fishing data, and conclusion of the 2023 acoustic survey.

This conservative TAC setting process, endorsed by the AP, resulted in a TAC that is less than what it would be using the default harvest rate under the Agreement.

The JMC agreed on a recommended and adjusted coastwide TAC of 625,000 mt, of Pacific whiting, which resulted in a U.S. TAC of 461,750 mt (73.88 percent of 625,000 mt). This recommendation is consistent with the best available scientific information, provisions of the Agreement, and the Pacific Whiting Act of 2006 (Whiting Act). The recommendation was transmitted via letter to the United States and Canadian Governments on March 2, 2023.

Consistent with the Agreement, the Department of Commerce consulted with the Department of State on the recommended TAC. In a written communication to the NMFS West Coast Region on March 17, 2023, the State Department concurred with the NMFS recommendation to accept the JMC recommended adjusted TAC for 2023. NMFS, under delegation of authority from the Secretary of Commerce, approved the adjusted TAC recommendation of 461,750 mt for U.S. fisheries on March 23, 2023.

This final rule announces the adjusted coastwide TAC of 625,000 mt and adjusted U.S. TAC of 461,750 mt, and implements the domestic 2023 Pacific whiting harvest specifications, including, the 2023 tribal allocation of 80,806 mt, the preliminary allocations for three non-tribal commercial whiting sectors, and a set-aside for incidental mortality in research activities and non-groundfish) fisheries (e.g. pink shrimp fishery). The tribal and non-tribal allocations for Pacific whiting, as well as the set-aside, are effective until December 31, 2023.

### **Tribal Allocations**

This final rule establishes the tribal allocation of Pacific whiting for 2023 as described in the proposed rule (88 FR 20457). Since 1996, NMFS has been allocating a portion of the U.S. TAC of Pacific whiting to the tribal fishery. Regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) specify that the tribal allocation is subtracted from the total U.S. Pacific whiting TAC. The tribal Pacific whiting fishery is managed separately from the non-tribal Pacific whiting fishery and is not governed by limited entry or open access regulations or allocations. NMFS is establishing the 2023 tribal allocation as 80,806 mt (17.5 percent of the U.S. TAC) in this final rule.

In 2009, NMFS, the states of Washington and Oregon, and the tribes with treaty rights to harvest Pacific whiting started a process to determine the long-term tribal allocation for Pacific whiting; however, no long-term allocation has been determined. While new scientific information or discussions with the relevant parties may impact that decision, the best available scientific information to date suggests that 80,806 mt is within the likely range of potential treaty right amounts. As with prior tribal Pacific whiting allocations, this final rule is not intended to establish precedent for future Pacific whiting seasons, or for the determination of the total amount of Pacific whiting to which the Tribes are entitled under their treaty right. The long-term tribal treaty amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and the states of Washington and Oregon.

## **Non-Tribal Research and Bycatch Set-Aside**

The U.S. non-tribal whiting fishery is managed under the Council's Pacific Coast Groundfish FMP. Each year, the Council recommends a set-aside of Pacific whiting to accommodate incidental mortality of the fish in research activities and non-groundfish fisheries based on estimates of scientific research catch and estimated bycatch mortality in non-groundfish fisheries. At its November 2022 meeting, the Council recommended an incidental mortality set-aside of 750 mt for 2023. This set-aside is unchanged from the 750 mt set-aside amount for incidental mortality in 2023. Consistent with section 303(c)(2) of the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), on November 16, 2022, the Council deemed the proposed regulations for the research and incidental mortality set-aside to be necessary and appropriate to implement the FMP. This final rule will implement the Council's recommendations.

## **Non-Tribal Harvest Guidelines and Allocations**

This final rule implements the fishery harvest guideline (HG), also called the non-tribal allocation as described in the proposed rule published on April 06, 2023 (88 FR 20457). The 2023 fishery HG for Pacific whiting is 380,194 mt. This amount was determined by deducting the 80,806 mt tribal allocation and the 750 mt allocation for scientific research catch and fishing mortality in non-groundfish fisheries from the adjusted U.S. TAC of 461,750 mt. Federal regulations further allocate the fishery HG among the three non-tribal sectors of the Pacific whiting fishery: The catcher/processor (C/P) Co-op Program, the Mothership (MS) Co-op Program, and the Shorebased Individual Fishing Quota (IFQ) Program. The C/P Co-op Program is allocated 34 percent (129,265 mt for 2023), the MS Co-op Program is allocated 24 percent (91,246 mt for 2023), and the Shorebased IFQ Program is allocated 42 percent (159,681 mt for 2023). The fishery south of 42° N lat. may not take more than 7,984 mt (5 percent of the Shorebased IFQ Program allocation) prior to May 1, the start of the primary Pacific whiting season north of 42° N lat.

**Table 1 – 2023 U.S. Pacific Whiting Allocations in Metric Tons**

<b>Sector</b>	<b>2023 Pacific whiting allocation (mt)</b>
Tribal	80,806
Catcher/Processor (C/P) Co-op Program	129,266
Mothership (MS) Co-op Program	91,247
Shorebased IFQ Program	159,681

This rule would be implemented under the statutory and regulatory authority of sections 304(b) and 305(d) of the Magnuson-Stevens Act, the Whiting Act, the regulations governing the groundfish fishery at 50 CFR 660.5 through 660.360, and other applicable laws. Additionally, with this final rule, NMFS, will ensure that the fishery is managed in a manner consistent with treaty rights of four Treaty Tribes to fish in their “usual and accustomed grounds and stations” in common with non-tribal citizens. *United States v. Washington*, 384 F. Supp. 313 (W.D. 1974).

### **Comments and Responses**

NMFS issued a proposed rule on April 6, 2023 (88 FR 20457). The comment period on the proposed rule closed April 21, 2023. No comments were received during the public comment period.

### **Changes from the Proposed Rule**

NMFS has not made any changes to the proposed regulatory text and there are no substantive changes from the proposed rule.

### **Classification**

The Administrator, West Coast Region, NMFS, determined that the final rule is necessary for the conservation and management of the Pacific whiting and that it is consistent with sections 304(b) and 305(d), and other provisions of the Magnuson-Stevens Act, the Pacific Coast Groundfish FMP, and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator finds good cause to waive the 30-day delay in the date of effectiveness for this final rule because such a delay would be contrary to the public interest. If this final rule were delayed by 30 days, Pacific coast whiting fishermen would not be able to fish under the final catch limits for Pacific whiting for that time period, and would not be able to realize the full level of economic opportunity this rule provides. Waiving the 30-day delay in the date of effectiveness will allow this final rule to more fully benefit the fishery through increased fishing opportunities as described in the preamble of this rule.

This rulemaking could not be completed prior to the May 1 start date of the 2023 Pacific Whiting primary fishing season due to the short time frame between the approval of the TAC recommendation and the start of the fishing season. The AP and JMC met in Vancouver, British Columbia, Canada on February 28–March 1, 2023, to develop advice on a 2023 coastwide TAC. At this meeting, the JMC agreed on a TAC recommendation, which was transmitted to the United States and Canadian Governments on March 2, 2023. The Department of Commerce consulted with the Department of State on the recommended TAC, and concurred with the NMFS West Coast Region on March 17, 2023 to accept the JMC recommended adjusted TAC for 2023. NMFS, under delegation of authority from the Secretary of Commerce, approved the TAC recommendation U.S. fisheries on March 23, 2023. This rulemaking was proceeded once the JMC agreed on a recommended coastwide TAC, and the Department of Commerce in consultation with the Department of State reviewed and approved the recommended U.S. TAC. The proposed rule published on April 6, 2023 and the public comment period closed on April 21, 2023 (88 FR 20457). The 2023 Pacific whiting primary fishing season began shortly thereafter on May 1, 2023.

In addition, because this rule increases catch limits for Pacific whiting compared to the interim allocation the fishery is currently operating under, it therefore finds good cause to waive the 30-day delay in the date of effectiveness requirement. The Pacific whiting fishery season

began fishing on May 01, 2023 under interim allocations based on the lowest coastwide TAC considered in the proposed rule. This final rule implements a higher TAC for Pacific whiting than the interim allocation provided prior to the season opening, and implementing the rule upon publication provides the whiting fleet more opportunity and greater flexibility to harvest the optimal yield. Timely implementation of the full TAC will avoid the need to pause the Pacific whiting fishery if the interim allocations are fully harvested. Additionally, many vessels in the Pacific Whiting fishery also participate in the Alaskan Pollock fishery. Issuing complete 2023 whiting allocations to quota owners in a timely fashion ensures they can plan their participation for the year in both the Pacific Whiting and Alaskan Pollock fisheries.

Waiving the 30-day delay in effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Making this rule effective immediately would also serve the best interests of the public because it will allow for the longest possible fishing season for Pacific whiting and therefore the best possible economic outcome for those whose livelihoods depend on this fishery.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

A range of potential total harvest levels for Pacific whiting have been considered under the Final Environmental Impact Statement for Harvest Specifications and Management Measures for 2015-2016 and Biennial Periods thereafter (2015/16 FEIS) and in the Amendment 30 to the Pacific Coast Groundfish Fishery Management Plan, 2023-2024 Harvest Specifications, and Management Measures Environmental Assessment (EA) and Regulatory Impact Review (RIR) and is available from NMFS (see **ADDRESSES**). The 2015/16 FEIS examined the harvest specifications and management measures for 2015–16 and 10 year projections for routinely adjusted harvest specifications and management measures. The 10 year projections were produced to evaluate the impacts of the ongoing implementation of harvest specifications and management measures and to evaluate the impacts of the routine adjustments that are the main



component of each biennial cycle. The EA for the 2023–24 cycle tiers from the 2015/16 FEIS and focuses on the harvest specifications and management measures that were not within the scope of the 10 year projections in the 2015/16 FEIS.

### **Final Regulatory Flexibility Analysis**

NMFS issued a proposed rule on April 6, 2023 (88 FR 20457), for the 2023 Harvest Specifications for Pacific Whiting, and 2023 tribal allocation for Pacific whiting. An Initial Regulatory Flexibility Analysis (IRFA) was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule closed April 21, 2023. NMFS did not receive any public comments on the proposed rule. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments on the IRFA or the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. A Final Regulatory Flexibility Analysis (FRFA) was prepared and incorporates the IRFA. There were no public comments received on the IRFA. NMFS also prepared a RIR for this action. A copy of the RIR/FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA, per the requirements of 5 U.S.C. 604 follows.

Under the Regulatory Flexibility Act (RFA), the term “small entities” includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration has established size criteria for entities involved in the fishing industry that qualify as small businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts, not in excess of \$11 million for all its affiliated operations worldwide (see 80 FR 81194, December 29, 2015). A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A small organization is any nonprofit enterprise that is independently owned and operated and is not dominant in its

field. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide (See North American Industry Classification System (NAICS) code 311710 at 13 CFR 121.201). For purposes of rulemaking, NMFS is also applying the seafood processor standard to catcher processors because whiting C/Ps earn the majority of the revenue from processed seafood product.

*A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments*

No public comments were received on the proposed rule.

*Description and Estimate of the Number of Small Entities to which the Rule Applies, and Estimate of Economic Impacts by Entity Size and Industry*

This final rule announces the adjusted coastwide TAC and U.S. TAC and allocates Pacific whiting to the following sectors/programs: Tribal, Shorebased IFQ Program Trawl Fishery, MS Coop Program Whiting At-sea Trawl Fishery, and C/P Coop Program Whiting At-sea Trawl Fishery. The amount of Pacific whiting allocated to these sectors is based on the adjusted U.S. TAC.

We expect one tribal entity to fish for Pacific whiting in 2023. Tribes are not considered small entities for the purposes of RFA. Impacts to tribes are nevertheless considered in this analysis.

As of January 2023, the Shorebased IFQ Program is composed of 164 Quota Share permits/accounts (134 of which were allocated whiting quota pounds), and 35 first receivers, one of which is designated as whiting-only receivers and 11 that may receive both whiting and non-whiting.

These regulations also directly affect participants in the MS Co-op Program, a general term to describe the limited access program that applies to eligible harvesters and processors in

the MS sector of the Pacific whiting at-sea trawl fishery. This program consists of six MS processor permits, and a catcher vessel fleet currently composed of a single co-op, with 34 Mothership/Catcher Vessel (MS/CV) endorsed permits (with three permits each having two catch history assignments).

These regulations also directly affect the C/P Co-op Program, composed of 10 C/P endorsed permits owned by three companies that have formed a single coop. These co-ops are considered large entities from several perspectives; they have participants that are large entities, and have in total more than 750 employees worldwide including affiliates.

Although there are three non-tribal sectors, many companies participate in two sectors and some participate in all three sectors. As part of the permit application processes for the non-tribal fisheries, based on a review of the Small Business Administration size criteria, permit applicants are asked if they considered themselves a “small” business, and they are asked to provide detailed ownership information. Data on employment worldwide, including affiliates, are not available for these companies, which generally operate in Alaska as well as the West Coast and may have operations in other countries as well. NMFS has limited entry permit holders self-report size status. For 2023, all 10 C/P permits reported they are not small businesses, as did 8 mothership catcher vessels. There is substantial, but not complete overlap between permit ownership and vessel ownership so there may be a small number of additional small entity vessel owners who will be impacted by this rule. After accounting for cross participation, multiple Quota Share account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these regulations, 89 of which are considered “small” businesses.

This rule will allocate Pacific whiting between tribal and non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries consist of a mixture of fishing activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests may be delivered to both shoreside plants and motherships for processing. These processing facilities also process

fish harvested by non-tribal fisheries. The effect of the tribal allocation on non-tribal fisheries will depend on the level of tribal harvests relative to their allocation and the reapportionment process. If the tribes do not harvest their entire allocation, there are opportunities during the year to reapportion unharvested tribal amounts to the non-tribal fleets. For example, in 2022 NMFS reapportioned 40,000 mt of the original 70,463 mt tribal allocation. This reapportionment was based on conversations with the tribes and the best information available at the time, which indicated that this amount would not limit tribal harvest opportunities for the remainder of the year. The reapportioning process allows unharvested tribal allocations of Pacific whiting to be fished by the non-tribal fleets, benefitting both large and small entities. The revised Pacific whiting allocations for 2022 following the reapportionment were: Tribal 30,463 mt, C/P Co-op 126,287 mt; MS Co-op 89,144 mt; and Shorebased IFQ Program 156,002 mt.

The prices for Pacific whiting are largely determined by the world market because most of the Pacific whiting harvested in the United States is exported. The U.S. Pacific whiting TAC is highly variable, as have subsequent harvests and ex-vessel revenues. For the years 2016 to 2020, the total Pacific whiting fishery (tribal and non-tribal) averaged harvests of approximately 303,782 mt annually. The 2022 U.S. non-tribal fishery had a Pacific whiting catch of approximately 291,337 mt, and the tribal fishery landed less than 1,100 mt.

Impacts to the U.S. non-tribal fishery are measured with an estimate of ex-vessel revenue. The adjusted coastwide TAC of 625,000 mt would result in an adjusted U.S. TAC of 461,750 mt and, after deduction of the tribal allocation and the incidental catch set-aside, a U.S. non-tribal harvest guideline of 380,194 mt. Using the 2022 weighted-average non-tribal price per metric ton (*e.g.* \$233.5 per metric ton), the TAC is estimated to result in an ex-vessel revenue of \$88.8 million for the U.S. non-tribal fishing fleet.

Impacts to tribal catcher vessels who elect to participate in the tribal fishery are measured with an estimate of ex-vessel revenue. In lieu of more complete information on tribal deliveries, total ex-vessel revenue is estimated with the 2022 average ex-vessel price of Pacific whiting,

which was \$233.50 per mt. At that price, the 2023 tribal allocation of 80,806.25 mt would have an ex-vessel value of \$18.87 million.

*A Description of any Significant Alternatives to the Proposed Rule that Accomplish the Stated Objectives of Applicable Statutes and that Minimize any Significant Economic Impact of the Proposed Rule on Small Entities.*

For the allocations to the non-tribal commercial sectors the Pacific whiting tribal allocation, and the set-aside for research and incidental mortality NMFS considered two alternatives: “No Action” and the “Proposed Action.” No other alternatives were considered by the Council at their November 2022 meeting.

Under the no action alternative, NMFS would not implement allocations to the non-tribal sectors based on the JMC recommended U.S. TAC, which would not fulfill NMFS’ responsibility to manage the U.S. fishery. This is contrary to the Whiting Act and Agreement, which requires sustainable management of the Pacific whiting resource, therefore this alternative received no further consideration.

Under the no action alternative, NMFS would not implement the set-aside amount of 750 mt recommended by the Council. Not implementing a set-aside of the US whiting TAC would mean incidental mortality of the fish in research activities and non-groundfish fisheries would not be accommodated. This would be inconsistent with the Council’s recommendation, the Pacific Groundfish Fishery Management Plan, the regulations setting the framework governing the groundfish fishery, and NMFS’ responsibility to manage the fishery. Therefore the no action alternative received no further consideration.

NMFS did not consider a broader range of alternatives to the tribal allocation because the tribal allocation is a percentage of the U.S. TAC and is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for Pacific whiting. Under the Action alternative, NMFS will set the tribal allocation percentage at 17.5 percent, as requested by the Tribes. This would yield a

tribal allocation of 80,806 mt for 2023. Consideration of a percentage lower than the tribal request of 17.5 percent is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the Tribes. Based on the information available to NMFS, the tribal request is within their tribal treaty rights. A higher percentage would arguably also be within the scope of the treaty right. However, a higher percentage would unnecessarily limit the non-tribal fishery.

Under the no action alternative, NMFS would not make an allocation to the tribal sector. This alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, the no action alternative would result in no allocation of Pacific whiting to the tribal sector in 2023, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the Tribes' treaty rights. Given that there is a tribal request for allocation in 2023, this alternative received no further consideration.

#### *Regulatory Flexibility Act Determination of No Significant Impact*

NMFS determined this final rule would not adversely affect small entities. The reapportioning process allows unharvested tribal allocations of Pacific whiting, fished by small entities, to be fished by the non-tribal fleets, benefitting both large and small entities.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. A small entity compliance guide will be sent to stakeholders, and copies of the final rule and guides (*i.e.*, information bulletins) are available from NMFS at the following website:

<https://www.fisheries.noaa.gov/species/pacific-whiting#management>.

With this final rule, NMFS, acting on behalf of the Secretary, determined that the FMP is implemented in a manner consistent with treaty rights of four Treaty Tribes to fish in their “usual and accustomed grounds and stations” in common with non-tribal citizens. *United States v. Washington*, 384 F. Supp. 313 (W.D. Wash. 1974).

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

### **List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian fisheries.

Dated: May 23, 2023.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

### **PART 660—FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.50, revise paragraph (f)(4) to read as follows:

#### **§ 660.50 Pacific Coast treaty Indian fisheries.**

\* \* \* \* \*

(f) \* \* \*

(4) *Pacific whiting*. The tribal allocation for 2023 is 80,806 mt.

\* \* \* \* \*

**Table 1a to Part 660, Subpart C—2023, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest Guidelines (Weights in Metric Tons). Capitalized stocks are overfished.**

## Stock Complexes



Blue/Deacon/Black Rockfish <sup>ii/</sup>	Oregon	679	597	597	595.2
Cabazon/Kelp Greenling <sup>jj/</sup>	Washington	202	185	185	184.2
Cabazon/Kelp Greenling <sup>kk/</sup>	Oregon	25	20	20	18.0
Nearshore Rockfish North <sup>ll/</sup>	N. of 40°10' N. lat.	110	93	93	89.7
Nearshore Rockfish South <sup>mm/</sup>	S. of 40°10' N. lat.	1,089	897	887	882.5
Other Fish <sup>nn/</sup>	Coastwide	286	223	223	201.8
Other Flatfish <sup>oo/</sup>	Coastwide	7,887	4,862	4,862	4,641
Shelf Rockfish North <sup>pp/</sup>	N. of 40°10' N. lat.	1,614	1,283	1,283	1,212.1
Shelf Rockfish South <sup>qq/</sup>	S. of 40°10' N. lat.	1,835	1,469	1,469	1,336.2
Slope Rockfish North <sup>rr/</sup>	N. of 40°10' N. lat.	1,819	1,540	1,540	1,474.6
Slope Rockfish South <sup>ss/</sup>	S. of 40°10' N. lat.	870	701	701	662.1

a/ Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

b/ Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

c/ Yelloweye rockfish. The 66 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 10.7 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.12 mt), research catch (2.92 mt), and incidental open access mortality (2.66 mt) resulting in a fishery HG of 55.3 mt. The non-trawl HG is 50.9 mt. The combined non-nearshore/nearshore HG is 10.7 mt. Recreational HGs are: 13.2 mt (Washington); 11.7 mt (Oregon); and 15.3 mt (California). In addition, the non-trawl ACT is 39.9 mt, and the combined non-nearshore/nearshore ACT is 8.4 mt. Recreational ACTs are: 10.4 mt (Washington), 9.2 mt (Oregon), and 12.0 mt (California).

d/ Arrowtooth flounder. 2,094.98 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), research catch (12.98 mt) and incidental open access mortality (41 mt), resulting in a fishery HG of 16,537 mt.

e/ Big skate. 59.8 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), research catch (5.49 mt), and incidental open access mortality (39.31 mt), resulting in a fishery HG of 1,260.2 mt.

f/ Black rockfish (California). 2.26 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt), research catch (0.08 mt), and incidental open access mortality (1.18 mt), resulting in a fishery HG of 332.1 mt.

g/ Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 271.8 mt.

h/ Bocaccio south of 40°10' N lat Bocaccio are managed with stock-specific harvest specifications south of 40°10' N lat and within the Minor Shelf Rockfish complex north of 40°10' N lat. 48.12 mt is deducted from the ACL to accommodate EFP fishing (40 mt), research catch (5.6 mt), and incidental open access mortality (2.52 mt), resulting in a fishery HG of 1,793.9 mt. The California recreational fishery south of 40°10' N lat. has an HG of 755.6 mt.

i/ Cabezon (California). 1.63 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (0.02 mt), and incidental open access fishery mortality (0.61 mt), resulting in a fishery HG of 180.4 mt.

j/ California scorpionfish south of 34°27' N lat. 3.89 mt is deducted from the ACL to accommodate research (0.18 mt) and the incidental open access fishery (3.71 mt), resulting in a fishery HG of 258.4 mt.

k/ Canary rockfish. 68.91 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP fishing (6 mt), and research catch (10.08 mt), and incidental open access mortality (2.83 mt), resulting in a fishery HG of 1,215.1 mt. The combined nearshore/non-nearshore HG is 121.2 mt. Recreational HGs are: 41.4 mt (Washington); 62.3 mt (Oregon); and 111.7 mt (California).

l/ Chilipepper rockfish south of 40°10' N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10' N lat. and within the Minor Shelf Rockfish complex north of 40°10' N lat. 97.7 mt is deducted from the ACL to accommodate EFP fishing (70 mt), research catch (14.04 mt), incidental open access fishery mortality (13.66 mt), resulting in a fishery HG of 2,085 mt.

m/ Cowcod south of 40°10' N lat. Cowcod are managed with stock-specific harvest specifications south of 40°10' N lat. and within the Minor Shelf Rockfish complex north of 40°10' N lat. 11.17 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (10 mt), and incidental open access mortality (0.17 mt), resulting in a fishery HG of 68.8 mt.

n/ Darkblotched rockfish. 23.76 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.5 mt), research catch (8.46 mt), and incidental open access mortality (9.8 mt) resulting in a fishery HG of 761.2 mt.

o/ Dover sole. 1,597.11 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), research catch (50.84 mt), and incidental open access mortality (49.27 mt), resulting in a fishery HG of 48,402.9 mt.

p/ English sole. 259.52 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), research catch (17 mt), and incidental open access mortality (42.52 mt), resulting in a fishery HG of 8,758.5 mt.

q/ Lingcod north of 40°10' N lat. 279.63 mt is deducted from the ACL for the Tribal fishery (250 mt), research catch (17.71 mt), and incidental open access mortality (11.92 mt) resulting in a fishery HG of 4,098.4 mt.

r/ Lingcod south of 40°10' N lat. 15.5 mt is deducted from the ACL to accommodate EFP fishing (4 mt), research catch (3.19 mt), and incidental open access mortality (8.31 mt), resulting in a fishery HG of 710.5 mt.

s/ Longnose skate. 251.3 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), research catch (12.46 mt), and incidental open access mortality (18.84 mt), resulting in a fishery HG of 1,456.7 mt.

t/ Longspine thornyhead north of 34°27' N lat. 53.71 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (17.49 mt), and incidental open access mortality (6.22 mt), resulting in a fishery HG of 2,241.3 mt.

u/ Longspine thornyhead south of 34°27' N lat. 2.24 mt is deducted from the ACL to accommodate research catch (1.41 mt) and incidental open access mortality (0.83 mt), resulting in a fishery HG of 722.8 mt.

v/ Pacific cod. 506 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (5.47 mt), and incidental open access mortality (0.53 mt), resulting in a fishery HG of 1,094 mt.

w/ Pacific ocean perch north of 40°10' N lat. Pacific ocean perch are managed with stock-specific harvest specifications north of 40°10' N lat. and within the Minor Slope Rockfish complex south of 40°10' N lat. 145.48 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), research catch (5.39 mt), and incidental open access mortality (10.09 mt), resulting in a fishery HG of 3,427.5 mt.

x/ Pacific hake/whiting. The 2023 OFL of 778,008 mt is based on the 2023 assessment with an F40 percent of FMSY proxy. The 2023 coastwide adjusted Total Allowable Catch (TAC) is 625,000 mt. The U.S. TAC is 73.88 percent of the coastwide TAC. The 2023 adjusted U.S. TAC is 461,750 mt. From the U.S. TAC, 80,806 mt is deducted to accommodate the Tribal fishery, and 750 mt is deducted to accommodate research and bycatch in other fisheries, resulting in a 2023 fishery HG of 380,194-mt. The TAC for Pacific whiting is established under the provisions of the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting of 2003 and the Pacific Whiting Act of 2006, 16 U.S.C. 7001-7010, and the international exception applies. Therefore, no ABC or ACL values are provided for Pacific whiting.

y/ Petrale sole. 386.24 mt is deducted from the ACL to accommodate the Tribal fishery (350 mt), EFP fishing (1 mt), research catch (24.14 mt), and incidental open access mortality (11.1 mt), resulting in a fishery HG of 3,098.8 mt.

z/ Sablefish north of 36° N lat. The sablefish coastwide ACL value is not specified in regulations. The coastwide sablefish ACL value is apportioned north and south of 36° N lat., using the rolling 5-year average estimated swept area biomass from the NMFS NWFSC trawl survey, with 78.4 percent apportioned north of 36° N

lat. and 21.6 percent apportioned south of 36° N lat. The northern ACL is 8,486 mt and is reduced by 849 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 849 mt Tribal allocation is reduced by 1.7 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

aa/ Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 2,338 mt (21.6 percent of the calculated coastwide ACL value). 27.4 mt is deducted from the ACL to accommodate research catch (2.40 mt) and incidental open access mortality (25 mt), resulting in a fishery HG of 2,310.6 mt.

bb/ Shortspine thornyhead north of 34°27' N lat. 78.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), research catch (10.48 mt), and incidental open access mortality (17.82 mt), resulting in a fishery HG of 1,280.7 mt for the area north of 34°27' N lat.

cc/ Shortspine thornyhead south of 34°27' N lat. 6.71 mt is deducted from the ACL to accommodate research catch (0.71 mt) and incidental open access mortality (6 mt), resulting in a fishery HG of 712.3 mt for the area south of 34°27' N lat.

dd/ Spiny dogfish. 351.48 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), EFP fishing (1 mt), research catch (41.85 mt), and incidental open access mortality (33.63 mt), resulting in a fishery HG of 1,104.5 mt.

ee/ Splitnose rockfish south of 40°10' N lat. 18.42 mt is deducted from the ACL to accommodate EFP fishing (1.5 mt), research catch (11.17 mt), and incidental open access mortality (5.75 mt), resulting in a fishery HG of 1,573.4 mt.

ff/ Starry flounder. 48.28 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), research catch (0.57 mt), and incidental open access mortality (45.71 mt), resulting in a fishery HG of 343.7 mt.

gg/ Widow rockfish. 238.32 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP fishing (18 mt), research catch (17.27 mt), and incidental open access mortality (3.05 mt), resulting in a fishery HG of 12,385.7 mt.

hh/ Yellowtail rockfish north of 40°10' N lat. Yellowtail rockfish are managed with stock-specific harvest specifications north of 40°10' N lat. and within the Minor Shelf Rockfish complex south of 40°10' N lat. 1,027.55 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), research catch (20.55 mt), and incidental open access mortality (7 mt), resulting in a fishery HG of 4,638.5 mt.

ii/ Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 1.82 mt is deducted from the ACL to accommodate research catch (0.08 mt) and incidental open access mortality (1.74 mt), resulting in a fishery HG of 595.2 mt.

jj/ Cabezon/kelp greenling (Oregon). 0.79 mt is deducted from the ACL to accommodate research catch (0.05 mt), and incidental open access mortality (0.74 mt), resulting in a fishery HG of 184.2 mt.

kk/ Cabezon/kelp greenling (Washington). 2 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG is 18 mt.

ll/ Nearshore Rockfish north of 40°10' N lat. 3.27 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), research catch (0.47 mt), and incidental open access mortality (1.3 mt), resulting in a fishery HG of 89.7 mt. State specific HGs are Washington (17.7 mt), Oregon (32.0 mt), and California (39.6 mt). The ACT for copper rockfish (California) is 6.93 mt. The ACT for quillback rockfish (California) is 0.87 mt.

mm/ Nearshore Rockfish south of 40°10' N lat. 4.54 mt is deducted from the ACL to accommodate research catch (2.68 mt) and incidental open access mortality (1.86 mt), resulting in a fishery HG of 882.5 mt. The ACT for copper rockfish is 84.61 mt. The ACT for quillback rockfish is 0.89 mt.

nn/ Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 21.24 mt is deducted from the ACL to accommodate research catch (6.29 mt) and incidental open access mortality (14.95 mt), resulting in a fishery HG of 201.8 mt.

oo/ Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 220.79 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), research catch (23.63 mt), and incidental open access mortality (137.16 mt), resulting in a fishery HG of 4,641.2 mt.

pp/ Shelf Rockfish north of 40°10' N lat. 70.94 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (15.32 mt), and incidental open access mortality (25.62 mt), resulting in a fishery HG of 1,212.1 mt.

qq/ Shelf Rockfish south of 40°10' N lat. 132.77 mt is deducted from the ACL to accommodate EFP fishing (50 mt), research catch (15.1 mt), and incidental open access mortality (67.67 mt) resulting in a fishery HG of 1,336.2 mt.

rr/ Slope Rockfish north of 40°10' N lat. 65.39 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), and research catch (10.51 mt), and incidental open access mortality (18.88 mt), resulting in a fishery HG of 1,474.6 mt.

ss/ Slope Rockfish south of 40°10' N lat. 38.94 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (18.21 mt), and incidental open access mortality (19.73 mt), resulting in a fishery HG of 662.1 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10' N lat. set equal to the

species' contribution to the ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10' N lat. counts against this HG of 172.4 mt.

4. Revise table 1b to part 660, subpart C, to read as follows:

**Table 1b to Part 660, Subpart C—2023, and Beyond, Allocations by Species or Species Group [Weight in Metric Tons]**

Stocks/Stock Complexes	Area	Fishery HG or ACT a/ b/	Trawl		Non-Trawl	
			%	Mt	%	Mt
YELLOWEYE ROCKFISH <sup>a/</sup>	Coastwide	55.3	8	4.4	92	50.9
Arrowtooth flounder	Coastwide	16,537	95	15,710.2	5	826.9
Big skate <sup>a/</sup>	Coastwide	1,260.2	95	1,197.2	5	63
Bocaccio <sup>a/</sup>	S of 40°10' N. lat.	1,793.9	39	700.3	61	1,093.5
Canary rockfish <sup>a/</sup>	Coastwide	1,215.1	72.3	878.5	27.7	336.6
Chilipepper rockfish	S of 40°10' N. lat.	2,085	75	1,563.8	25	521.3
Cowcod <sup>a/</sup>	S of 40°10' N. lat.	68.8	36	24.8	64	44.1
Darkblotched rockfish	Coastwide	761.2	95	723.2	5	38.1
Dover sole	Coastwide	48,402.8	95	45,982.7	5	2,420.1
English sole	Coastwide	8,758.5	95	8,320.6	5	437.9
Lingcod	N of 40°10' N. lat.	4,098.4	45	1,844.3	55	2,254.1
Lingcod <sup>a/</sup>	S of 40°10' N. lat.	710.5	40	284.2	60	426.3
Longnose skate <sup>a/</sup>	Coastwide	1,456.7	90	1,311	10	145.7
Longspine thornyhead	N of 34°27' N. lat.	2,241.3	95	2,129.2	5	112.1
Pacific cod	Coastwide	1,094	95	1,039.3	5	54.7
Pacific ocean perch	N of 40°10' N. lat.	3,427.5	95	3,256.1	5	171.4
Pacific whiting <sup>c/</sup>	Coastwide	380,194	100	380,194	0	0
Petrale sole <sup>a/</sup>	Coastwide	3,098.8		3,068.8		30
Sablefish	N of 36° N. lat.	NA	See Table 1c			
Sablefish	S of 36° N. lat.	2,310.6	42	970.5	58	1,340.1
Shortspine thornyhead	N of 34°27' N. lat.	1,280.7	95	1,216.7	5	64
Shortspine thornyhead	S of 34°27' N. lat.	712.3		50		662.3
Splitnose rockfish	S of 40°10' N. lat.	1,572.4	95	1,494.7	5	78.7
Starry flounder	Coastwide	343.7	50	171.9	50	171.9
Widow rockfish <sup>a/</sup>	Coastwide	12,385.7		11,985.7		400

Yellowtail rockfish	N of 40°10' N. lat.	4,638.5	88	4,081.8	12	556.6
Other Flatfish	Coastwide	4,641.2	90	4,177.1	10	464.1
Shelf Rockfish <sup>a/</sup>	N of 40° 10' N. lat.	1,212.1	60.2	729.7	39.8	482.4
Shelf Rockfish <sup>a/</sup>	S of 40° 10' N. lat.	1,336.2	12.2	163	87.8	1,173.2
Slope Rockfish	N of 40° 10' N. lat.	1,474.6	81	1,194.4	19	280.2
Slope Rockfish <sup>a/</sup>	S of 40° 10' N. lat.	662.1	63	417.1	37	245

a/ Allocations decided through the biennial specification process.

b/ The cowcod non-trawl allocation is further split 50:50 between the commercial and recreational sectors. This results in a sector-specific ACT of 22 mt for the commercial sector and 22 mt for the recreational sector.

c/ Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

5. In § 660.140, revise paragraph (d)(1)(ii)(D) to read as follows:

#### **§ 660.140 Shorebased IFQ Program.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(D) *Shorebased trawl allocations.* For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

Table 1 to Paragraph (d)(1)(ii)(D)

IFQ species	Area	2023 Shorebased trawl allocation (mt)	2024 Shorebased trawl allocation (mt)
YELLOWEYE ROCKFISH	Coastwide	4.42	4.42
Arrowtooth flounder	Coastwide	15,640.17	11,408.87
Bocaccio	South of 40°10' N. lat.	700.33	694.87
Canary rockfish	Coastwide	842.50	830.22
Chilipepper	South of 40°10' N. lat.	1,563.80	1517.60
Cowcod	South of 40°10' N. lat.	24.80	24.42
Darkblotched rockfish	Coastwide	646.78	613.53

Dover sole	Coastwide	45,972.75	45,972.75
English sole	Coastwide	8,320.56	8,265.46
Lingcod	North of 40°10' N. lat.	1,829.27	1,593.47
Lingcod	South of 40°10' N. lat.	284.20	282.60
Longspine thornyhead	North of 34°27' N. lat.	2,129.23	2,002.88
Pacific cod	Coastwide	1,039.30	1,039.30
Pacific halibut (IBQ) <sup>a</sup>	North of 40°10' N. lat.	TBD	TBD
Pacific ocean perch	North of 40°10' N. lat.	2,956.14	2,832.64
Pacific whiting <sup>a</sup>	Coastwide	159,681.38	TBD
Petrale sole	Coastwide	3,063.76	2,863.76
Sablefish	North of 36° N. lat.	3,893.50	3,559.38
Sablefish	South of 36° N. lat.	970.00	889.00
Shortspine thornyhead	North of 34°27' N. lat.	1,146.67	1,117.22
Shortspine thornyhead	South of 34°27' N. lat.	50	50
Splitnose rockfish	South of 40°10' N. lat.	1,494.70	1,457.60
Starry flounder	Coastwide	171.86	171.86
Widow rockfish	Coastwide	11,509.68	10,367.68
Yellowtail rockfish	North of 40°10' N. lat.	3,761.84	3,668.56
Other Flatfish complex	Coastwide	4,142.09	4,152.89
Shelf Rockfish complex	North of 40°10' N. lat.	694.70	691.65
Shelf Rockfish complex	South of 40°10' N. lat.	163.02	163.02
Slope Rockfish complex	North of 40°10' N. lat.	894.43	874.99
Slope Rockfish complex	South of 40°10' N. lat.	417.1	414.58

a/ Managed through an international process. These allocations will be updated when announced.

\* \* \* \* \*

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